IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2236 of 1993
with
CIVIL APPLICATION No 7048 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISH MANUBHAI GADHVI,

Versus

CHANDUBHAI SHANKERBHAI RAVAL,

Appearance:
1. First Appeal No. 2236 of 1993
MR AJAY H MEHTA and MR RAJNI H MEHTA for appellant - Insurance Company.
MR NM KAPADIA for Respondent
2. Civil Application No. 7048 of 2002
MR NM KAPADIA for applicant
MR AJAY H MEHTA and MR RAJNI H MEHTA for opponent - Insurance Company.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and

MR.JUSTICE H.K.RATHOD

Date of decision: 24/10/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The appellant (original opponents) have filed this appeal challenging the common judgment and award dated 31st May 1993 passed by the Motor Accident Claims Tribunal (Main), Ahmedabad (Rural), whereby the Tribunal has allowed M.A.C.Petition No. 988 of 1987 and awarded Rs.5,00,000/- with interest at the rate of 15% from the date of the petition till realisation, with costs. The opponents were to bear their own costs and they were granted time of four months to deposit the amount with the Tribunal and they were further given a concession to deposit the amount at the rate of 12%, if deposited within four months, instead of 15%. The Tribunal by the said common judgment, disposed of four M.A.C. Petitions.

2. The incident in question had taken place on 22.7.1987 at about 4.30 a.m., near Sarkhej, on National Highway No.8. All the claimants of M.A.C.P. No.988 of 1987, 897 of 1987, 759 of 1987 and 760 of 1987 were travelling in separate camel carts, when the Truck No. GRX 3737 came from behind and collided with the said camel carts, causing fatal injuries to Kanabhai Karsanbhai Bharwad (whose heirs have filed M.A.C.P. No. 760/87) and causing injuries to other three claimants. Therefore, the injured persons filed Claim Petition Nos.988 of 1987, 897 of 1987 and 759 of 1987, whereas the heirs and legal representatives of deceased Kanabhai Bharwad filed M.A.C.P. no.760 of 1987.

3. At the time of hearing of the appeal, learned Counsel Mr.Ajay Mehta appearing on behalf of the respondent New India Assurance Co.Ltd., seriously challenged the award of the Tribunal on the question of quantum. According to him, the Tribunal has really misdirected itself by granting the full claim made by the claimant. He has also taken strong exception to the interest granted at the rate of 15% on the amount of compensation. However, learned Advocate Mr.Kapadia appearing on behalf of the claimant supported the judgment of the Tribunal in toto. According to the Tribunal, the claimant is entitled to get compensation of Rs.6,13,800/-. The break up of the said amount on different heads is as under:

Rs.2,16,000/- for loss of future income.
Rs.1,50,000/- for pain, shock and suffering.

Rs. 20,000/- for expenses incurred.
Rs. 37,800/- for loss of past income.
Rs.1,80,000/- for future expenses.
Rs. 3,500/- for death of camel.
Rs. 4,500/- for damage to camel cart.

Rs.6,13,800/- Total
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Since the claim is only for Rs.5,00,000/-, the Tribunal has awarded the said amount, i.e. Rs.5,00,000/- and answered the Issue No.2 in M.A.C.P. No.988 of 1987 accordingly.

4. After having gone through the evidence on record as well as the reasoning of the Tribunal and on considering the law on the point, we are also of the opinion that the amount of Rs.5,00,000/- awarded by way of compensation is on the higher side. So also, the interest at the rate of 15% on the amount of compensation. On calculating the amount of different heads, we have reached to the figure of Rs.4,10,000/-. We, accordingly suggested the said figure to learned Counsel Mr.Ajay Mehta, appearing for appellant Insurance Company as well as Mr.Kapadia appearing for the claimant. Both of them have accepted the said figure of Rs.4,10,000/-.

At this stage, learned Counsel Mr.Ajay Mehta appearing for the appellant Insurance Company has placed on record a letter dated November 28, 2000 addressed by the said Insurance Company to Mr.R.H. Mehta, Advocate, Ahmedabad whereby the Insurance Company has agreed for compromise and settlement for Rs.4,00,000/- plus cost and interest. Since the talks for settlement was going on between the parties wherein the Insurance Company has shown its willingness to pay the amount of Rs.4,00,000/plus cost and interest, and the amount suggested by us which is agreeable to both the sides and the same is in conformity with the established principles of law in granting compensation in such cases, with the consent of learned Counsel, we are not assigning reasons for arriving at the figure of Rs.4,10,000/- - the amount of compensation.

5. We accordingly allow this appeal by setting aside the judgment and award dated 31st May 1993 passed by the Motor Accident Claims Tribunal (Main), Ahmedabad (Rural) in M.A.C.P. No. 988 of 1987 only and instead, we pass the following order:

The respondent - claimant is entitled to Rs.4,10,000/(Rupees Four lakh and ten thousand only) together with interest at the rate of 9% per annum from the date of the petition till realisation with proportionate costs. The opponent do recover the said amount from the present appellants who are jointly and severally held liable to pay the same.

Since the Insurance Company has already deposited the entire amount with 15% interest, the Tribunal is directed to disburse the amount to the claimant after adjusting the amount already withdrawn under interim compensation, Court fees etc., by way of Account Payee Cheque, and thereafter to refund the balance amount, if any, to the appellant Insurance Company.

The appeal is allowed accordingly. There shall be no order as to costs.

6. Since the main appeal has been allowed by us, the Civil Application No.7048 of 2002 has become infructuous and it stands disposed of accordingly.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)
Sreeram.